IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO: 22425 of 1996

Between:

P.Yesudas S/o.Mallaiah
LIG Block No.10 Flat No.4, Baghlingampally,
Hyderabad

.... PETITIONER

AND

1 The Depot Manager A.P.S.R.T.C. Parigi Depot
2 Hon'ble Labour Court.III Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction or any order particularly one in the nature of writ of mandamus declaring the action of the respondent in passing the order dt.29/3/1994 in ID.No.109/93 as illegal void and contrary to judicial principles by setting aside and with consequential benefits of back wages.

Counsel for the Petitioner: Mr. J.C.FRANCIES
Counsel for the Respondent No.1: SC for APSRTC

The Court made the following:

O R D E R: -

This writ petition is directed against the award of the Labour Court III, Hyderabad, dated 29.03.1994 in I.D.109/1993.

2. The petitioner instituted I.D.No.109/93 under Section 2A (2) of the Industrial Disputes Act, 1947 (for short `the Act') aggrieved by the order of the A.P.S.R.T.C, dated 21.09.1987, removing him from service. The petitioner was charged and subjected to a departmental enquiry for involvement in cash and ticketing irregularities. The allegation against him was that he failed to issue tickets of Rs.1/- each to two passengers despite collecting the fare in the bus proceeding from Parigi to Shadnagar. Two other Charges of a technical nature relevant to this substantive Charge were also laid. On the basis of the oral and documentary evidence on record including the statements of passengers, the departmental authority found the petitioner guilty of the charge of collecting fare, but failing to issue tickets. After due process of enquiry, and compliance with the procedural formalities of issuing a show-cause notice and considering his explanations, the petitioner was inflicted with a penalty of removal from service.

3. The Labour Court by the award impugned, concurred with the finding of the departmental authorities with regard to the guilt of the petitioner in respect of the Charges alleged. However, the Labour Court erroneously and surprisingly came to a conclusion that as the amount of mis-appropriation is meager namely Rs.2/-, the extreme penalty of removal from service imposed on the petitioner was grossly disproportionate to the misconduct. Once mis-appropriation is established, the quantum of mis appropriated amount cannot enter

the calculus of the adjudicatory mind for determination of the quantum of penalty. Misappropriation of any amount is the gravest of mis-conducts. Be that as it may, on the above reasoning, the Labour Court concluded that as the petitioner was out of employment from 1987, equity requires that he should be reinstated into service, subject to denial of back wages. The Labour Court concluded that denial of back wages for the period he was kept out of service from 1987 till his reinstatement constitutes adequate punishment in the circumstances of the case. Aggrieved the employee has filed the present writ petition.

4. The A.P.S.R.T.C has not filed any writ petition against the award and this writ petition is at the instance of the workman.

5. As the petitioner has been found guilty concurrently both in the departmental enquiry as well as by the Labour Court, of mis-appropriation of Corporation funds, which is *per se* a very grave mis-conduct, this Court is not satisfied that even the moderate penalty of denial of back wages for the years the petitioner was out of service, should be interfered with.

6. There are no merits in the writ petition and it is accordingly dismissed. No costs.

Sd/-

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1 The Depot Manager A.P.S.R.T.C. Parigi Depot
2 Presiding Officer, Labour Court.III Hyderabad

3 2 CD copies

RAR/PVSN